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IMPOSSIBLE FOODS INC.

**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

IMPOSSIBLE FOODS INC., a Delaware  
corporation,  
  
Plaintiff/Counter-Defendant,  
  
v.  
  
IMPOSSIBLE LLC, a Texas limited liability  
company, and JOEL RUNYON,  
  
Defendants/Counter-Plaintiffs.

Case No. 5:21-cv-02419-BLF (SVK)

**MOTION TO STRIKE DEFENDANTS'  
AFFIRMATIVE DEFENSES;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT**

Judge: Hon. Beth Labson Freeman  
Date: June 26, 2025  
Time: 9:00 a.m.

**NOTICE OF MOTION**

TO DEFENDANTS/COUNTER-PLAINTIFFS IMPOSSIBLE LLC AND JOEL  
RUNYON AND THEIR ATTORNEYS OF RECORD:

PLAINTIFF'S MOTION TO STRIKE  
CASE NO. 5:21-CV-02419-BLF

PLEASE TAKE NOTICE THAT on June 26, 2025, before the Honorable Beth Labson Freeman, Courtroom 3, 5th floor, San Jose Courthouse, 280 South 1st Street, San Jose, California 95113, at 9:00 a.m. or as soon thereafter as the matter may be heard, Plaintiff/Counter-Defendant Impossible Foods Inc. (“Impossible Foods”) will and hereby does move to strike Defendants/Counter-Plaintiffs Impossible LLC’s and Joel Runyon’s (collectively, “Defendants”) select affirmative defenses asserted in Defendants’ Answer and Counterclaims to Impossible Foods’s Third Amended Complaint. ECF 168 at 49-51. Impossible Foods moves to strike the affirmative defenses of unclean hands, estoppel, waiver, and acquiescence from the record pursuant to Federal Rules of Civil Procedure 12(f), 15, 16 and Local Rule 10-1.

Impossible Foods’s motion is based on this Notice of Motion and accompanying Memorandum and Points of Authorities in Support, the pleadings and papers on file in this action, and such other written or oral argument as may be presented at or before the time this motion is heard and/or taken under submission by the Court.

DATED: April 4, 2025

Respectfully submitted,

**KILPATRICK TOWNSEND & STOCKTON**

By: /s/ H. Forrest Flemming, III

R. Charles Henn Jr. (*pro hac vice*)  
H. Forrest Flemming, III (*pro hac vice*)  
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*Attorneys for Plaintiff*  
IMPOSSIBLE FOODS INC.

PLAINTIFF’S MOTION TO STRIKE  
CASE NO. 5:21-CV-02419-BLF

1 **I. INTRODUCTION**

2 On March 4, 2025, the Court granted Impossible Foods’s motion to modify the  
3 Scheduling Order to allow Impossible Foods to amend its complaint and assert claims of  
4 trademark abandonment and fraud on the PTO. ECF 149. In their March 31 answer,  
5 Defendants asserted several affirmative defenses for the first time—without leave of Court.

6 This is the second time Defendants have brazenly amended their pleading without leave  
7 of Court, with the Court striking Defendants’ last attempt on December 18, 2024. ECF 117.  
8 Here, the Court should again strike Defendants’ improper and untimely amendment.  
9 Defendants could have asserted these defenses in their October 1, 2024 answer (ECF 107), so  
10 they cannot show the diligence required to modify the Scheduling Order to allow amendment  
11 of their pleading. Moreover, the assertion of new affirmative defenses with just two weeks left  
12 in fact discovery would irreparably prejudice Impossible Foods.

13 For these reasons, those provided below, and those provided in the Court’s December  
14 18 Order (ECF 117), the Court should strike Defendants’ untimely affirmative defenses of  
15 unclean hands, estoppel, waiver, and acquiescence (the “Defenses”).

16 **II. ARGUMENT**

17 “[A]n answer containing new defenses or counterclaims ‘may be filed without leave only  
18 when the amended complaint changes the theory or scope of the case, and then, **the breadth of**  
19 **the changes in the amended response must reflect the breadth of the changes in the**  
20 **amended complaint.**” *Synopsys, Inc. v. Magma Design Automation, Inc.*, No. C-04-2923  
21 MMC, 2005 WL 8153035, at \*3 (N.D. Cal. Oct. 19, 2005) (citation omitted) (emphasis added);  
22 *see also Neo4j, Inc. v. PureThink, LLC*, No. 5:18-cv-07182-EJD, 2021 WL 810260, at \*2 (N.D.  
23 Cal. Mar. 3, 2021) (same); *Adobe Sys. Inc. v. Coffee Cup Partners, Inc.*, No. C 11-2243 CW,  
24 2012 WL 3877783, at \*5 (N.D. Cal. Sept. 6, 2012) (same). Here, Impossible Foods’s  
25 amendments to the complaint added claims for trademark abandonment and fraud on the PTO.

1 But the Defenses are all affirmative defenses *to trademark infringement*, which was asserted in  
2 the September 17, 2024 Second Amended Complaint. Thus, the “breadth of the changes” in  
3 Defendants answer does *not* “reflect the breadth of the changes in the amended complaint.”

4 Defendants have not asked the Court to modify the Scheduling Order under Rule 16 to  
5 allow them to amend their pleading to assert the Defenses, and they can only do so through a  
6 properly noticed motion. But even if Defendants had noticed such a motion on March 31, their  
7 motion would have been denied. As the Court explained previously to Defendants, under Rule  
8 16: “If th[e] party was not diligent, the inquiry should end.” ECF 148 at 3 (quoting *Johnson v.*  
9 *Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992)). Here, Defendants had months to  
10 seek leave to raise the Defenses but did not do so. Thus, they could not show good cause to  
11 modify the Scheduling Order to amend their pleading under Rule 16.

12 Impossible Foods would also suffer irreparable prejudice if Defendants were permitted to  
13 raise the Defenses now. Fact discovery closes April 14, meaning Defendants raised the Defenses  
14 for the first time (on March 31) with just two weeks left in discovery. Thus, Impossible Foods  
15 was unable to serve document requests, interrogatories, and requests for admission aimed at  
16 these defenses. This is prejudice that cannot be cured in light of the remainder of the case  
17 schedule, with initial expert reports due April 28 (also less than a month after Defendants first  
18 raised the Defenses), summary judgment papers due July 3, and trial beginning November 10.  
19 ECF 113.

20 Defendants likely will argue that Impossible Foods can question their 30(b)(6) witness  
21 Joel Runyon about the Defenses at his April 10 deposition. That argument fails for at least two  
22 reasons. **First**, because Impossible Foods was denied the opportunity for written discovery into  
23 the Defenses, Impossible Foods will be unable to impeach Mr. Runyon’s testimony using  
24 produced documents or interrogatory answers. Impossible Foods would similarly be required to  
25 waste valuable deposition time (Mr. Runyon is Defendants’ *only* witness, meaning his deposition

1 must cover every single aspect of this case) exploring facts that could have been confirmed  
2 ahead of time through requests for admission.

3 ***Second***, Defendants failed to allege a single fact in support of any of the Defenses,  
4 meaning Impossible Foods has no idea what they are intended to entail. Again, Defendants are  
5 trying to force Impossible Foods to spend valuable deposition time exploring defenses for which  
6 Defendants have provided zero clarity. Defendants' failure to include any factual allegations  
7 supporting the Defenses exacerbates the prejudice to Impossible Foods, and it also independently  
8 justifies dismissing or striking the defenses under Rule 12. *See Cisco Sys., Inc. v. Chung*, No. 19-  
9 cv-07562-PJH, 2021 WL 427293, at \*8 (N.D. Cal. Feb. 8, 2021) ("Given that these allegations  
10 fall short of the applicable pleading requirements, the court strikes He's three remaining  
11 affirmative defenses [for failure to mitigate, unclean hands, and estoppel] without prejudice."); *G*  
12 *& G Closed Cir. Events, LLC v. Nguyen*, No. 10-CV-00168-LHK, 2010 WL 3749284, at \*3  
13 (N.D. Cal. Sept. 23, 2010) (striking a waiver affirmative defense as "insufficient because [it]  
14 amounts to the bare statement of a legal doctrine lacking any articulated connection to the claims  
15 in this case").

### 16 **III. CONCLUSION**

17 For the foregoing reasons, Impossible Foods respectfully requests the Court strike  
18 Defendants' unclean hands, estoppel, acquiescence, and waiver affirmative defenses from its  
19 Answer to Impossible Foods's Third Amended Complaint.

20  
21 DATED: April 4, 2025

Respectfully submitted,

22 **KILPATRICK TOWNSEND & STOCKTON**

23 By: /s/ H. Forrest Flemming, III

24  
25  
26 PLAINTIFF'S MOTION TO STRIKE  
27 CASE NO. 5:21-CV-02419-BLF

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2 H. Forrest Flemming, III (*pro hac vice*)  
3 Erica Chanin (*pro hac vice*)  
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*Attorneys for Plaintiff*  
IMPOSSIBLE FOODS INC.

**CERTIFICATE OF SERVICE**

I hereby certify that on April 4, 2024, the foregoing document was filed electronically using the Court's CM/ECF system, which will send notification of such filing to counsel of record.

/s/ H. Forrest Flemming, III

H. Forrest Flemming, III